

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

CITY OF CINCINNATI,

Plaintiff,

vs.

Case No. 2:17-cv-713

CHIEF JUDGE EDMUND A. SARGUS, JR.

Chief Magistrate Judge Elizabeth Deavers

AMERISOURCEBERGEN DRUG
CORPORATION *et al.* ,

Defendants.

PRETRIAL ORDER NO. 2

Status Conference, October 24, 2017

The following 19 cases (“Opiate Cases”) came before this Court for a telephonic status conference on October 24, 2017, 2017:

(1) *Clermont County Board Of County Commissioners v. AmerisourceBergen Drug Corporation et al.*, Case No. 17-cv-662; (2) *Belmont County Board of County Commissioners v. AmerisourceBergen Drug Corporation et al.*, Case No. 17-cv-663; (3) *Brown County Board of County Commissioners v. AmerisourceBergen Drug Corporation et al.*, Case No. 17-cv-664; (4) *Vinton County Board of County Commissioners v. AmerisourceBergen Corporation et al.*, Case No. 17-cv-665; (5) *Jackson County Board of County Commissioners v. AmerisourceBergen Drug Corporation et al.*, Case No. 17-cv-680; (6) *Scioto County Board of County Commissioners v. AmerisourceBergen Drug Corporation et al.*, Case No. 17-cv-682; (7) *Pike County Board of County Commissioners v. AmerisourceBergen Drug Corporation et al.*, Case No. 17-cv-696; (8) *Ross County Board of County Commissioners v. AmerisourceBergen Drug Corporation et al.*, Case No. 17-cv-704; (9) *City Of Cincinnati v. AmerisourceBergen Drug Corporation et al.*, Case No. 17-cv-713; (10) *City of Portsmouth v. Amerisourcebergen Drug Corporation et al.*, Case No. 17-cv-723; (11) *Gallia County Board of Commissioners v. AmerisourceBergen Drug Corporation et al.*, Case No. 17-cv-768; (12) *Hocking County Board of Commissioners v. AmerisourceBergen Drug Corporation et al.*, Case No. 17-cv-769; (13) *Lawrence County Board of Commissioners v. AmerisourceBergen Drug*

Corporation et al., Case No. 17-cv-770; (14) Columbiana County Board of County Commissioners *v. AmerisourceBergen Drug Corporation et al.*, Case No. 17-cv-883; (15) Guernsey County Board of County Commissioners *v. AmerisourceBergen Drug Corporation et al.*, Case No. 17-cv-886; (16) Huron County Board of County Commissioners *v. AmerisourceBergen Drug Corporation et al.*, Case No. 17-cv-891; (17) Adams County Board of County Commissioners *v. AmerisourceBergen Drug Corporation et al.*, Case No. 17-cv-894; (18) Licking County Board of County Commissioners *v. AmerisourceBergen Drug Corporation et al.*, Case No. 17-cv-904; (19) Erie County Board of County Commissioners *v. AmerisourceBergen Drug Corporation et al.*, Case No. 17-cv-918.

All parties were represented at the conference. In addition, several plaintiffs and attorneys for entities that have not yet been served listened in on the conference call. This Order memorializes the results of the conference as follows:

1. Current Posture: The Joint Panel on Multidistrict Litigation (“JPML”) has oral argument scheduled for November 30, 2017, to determine if these related Opiate Cases should be centralized as a single multidistrict litigation (“MDL”) with the other cases filed throughout the United States. If the JPML determines that the cases should be centralized, it will decide what court should hear the MDL.

There has been no decision on the motions to dismiss filed by the defendants in the opiate cases pending in West Virginia.

2. Amended Complaints and Additional Cases: The plaintiffs’ counsel informed the Court that they have filed Amended Complaints in 12 of the original 13 cases filed before this Court. And, since the last status conference six additional cases have been filed, bringing the total number to 19 pending before this Court.

The distributor defendants have consented to accept service of the Amended Complaints in the first 13 cases via electronic filing. The distributor defendants have designated a specific

contact person to accept service of the Summons and Complaint and intend to execute waivers in the remaining six cases.

The plaintiffs indicated that they have initiated service of the Summons and Complaint upon the 21 manufacturing defendants only in the City of Cincinnati case, Case No. 2:17-cv-713. The plaintiffs informed the Court that they are waiting for these defendants to make an appearance before effectuating service on the remainder of the cases.

3. Next Conference December 13, 2017: The Court schedules the next conference for **December 13, 2017 at 10:30 a.m.** The Court anticipates that this conference will likely only go forward if the JPML centralizes the opiate cases from other jurisdictions before this Court. The parties should consider the general framework they would suggest for management of the cases in terms of discovery and motions to dismiss.

4. The Plaintiffs' Request for Discovery: The Court affirmed its prior decision that it will not grant the plaintiffs' request to engage in discovery between the parties. Discovery between the parties is currently stayed.

5. Subpoena to the Drug Enforcement Agency ("DEA"): The plaintiffs requested, and this Court granted, permission to file a subpoena to be served upon the DEA for ARCOS database information. The subpoena will issue with following caveats, as explained by the Court:

The DEA will be told do not disclose any information before December 13th, so there's still no discovery between now and December 13th. If the DEA is going to object, they will do so in a timely fashion, and then -- I don't want to rush anybody, but I would say **within 14 days**, any party -- that would be the plaintiffs or the defendants -- **may file a memorandum in opposition**, and DEA will have **seven days thereafter for a final reply**.


So there will be nothing exchanged before December 13th, but, again, it's with the idea of teeing this up, and I also emphasize this is going to be an issue that's

going to be presented to some judge somewhere someday. So this is not all going to be for not if the case doesn't end up staying here.

(Hearing Transcript at 14–15, ECF No. 53) (emphasis added).

IT IS SO ORDERED.

10-27 -2017
DATE



EDMUND A. SARGUS, JR.
CHIEF UNITED STATES DISTRICT JUDGE